

# United States Senate

WASHINGTON, DC 20510-0609

WASHINGTON, DC:  
702 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5852

COLORADO:  
2300 15TH STREET  
SUITE 450  
DENVER, CO 80202  
(303) 455-7600

<http://www.bennet.senate.gov>

## Senate Committee on Rules Testimony of Senator Michael F. Bennet July 28, 2010; 10:30am

### I. Introduction.

Mr. Chairman, Ranking Member Bennett, my fellow witness  
Senator Lautenberg, colleagues and guests, I am pleased to have  
an opportunity to talk with you about solutions I have proposed  
to an important problem that impedes our government's ability  
to respond to the needs of American families.

I am talking about the Senate's rules. The Senate's rules are  
intended to encourage the body to function collegially, protect  
the rights of individual Senators and foster debate. Yet a few of  
these rules are actually having the real world outcome of  
inhibiting all of those legitimate purposes.

The pervasiveness of the filibuster – deployed every day for multiple purposes in this body – has started to cause the Senate to descend into complete dysfunction.

I am not here to advocate outlawing the filibuster. The Senate can and must protect individual or small groups of Senators.

And filibusters –used properly – can extend debate on important matters while members advocate for their constituents and engage in the battle of ideas that is the hallmark of this body.

Yesterday's failed procedural vote on Chairman Schumer's campaign finance legislation is the perfect example of the abuse of Senate rules. The filibuster – deployed for years to extend debate in the Senate – sometimes for a whole day at a time -- actually is now being used to undermine even even having

debate. By filibustering the ability of the Senate to begin debate on the DISCLOSE Act, yesterday's minority denied the American people a full airing of the recent Supreme court decision in *Citizens United v. FEC*, and how that decision might affect our democracy.

## **II. Filibusters now prevent – not extend debate.**

### *A. The motion to proceed.*

I have introduced S.Res.440, that in a very practical way, would have ensured that we could move ahead to the debate stage on the DISCLOSE Act. By making motions to proceed non-debatable, my Resolution eliminates filibusters that – rather than extend debate – actually are abused to prevent debate. My Resolution would help the body operate more efficiently.

## United States Senate

WASHINGTON, DC 20510-0609

WASHINGTON, DC:  
702 HART SENATE OFFICE BUILDING  
WASHINGTON, DC 20510  
(202) 224-5852

COLORADO:  
2300 15TH STREET  
SUITE 450  
DENVER, CO 80202  
(303) 455-7600

<http://www.bennet.senate.gov>

### **Senate Committee on Rules Testimony of Senator Michael F. Bennet July 28, 2010; 10:30am**

#### **I. Introduction.**

Mr. Chairman, Ranking Member Bennett, my fellow witness Senator Lautenberg, colleagues and guests, I am pleased to have an opportunity to talk with you about solutions I have proposed to an important problem that impedes our government's ability to respond to the needs of American families.

I am talking about the Senate's rules. The Senate's rules are intended to encourage the body to function collegially, protect the rights of individual Senators and foster debate. Yet a few of these rules are actually having the real world outcome of inhibiting all of those legitimate purposes.

The pervasiveness of the filibuster – deployed every day for multiple purposes in this body – has started to cause the Senate to descend into complete dysfunction.

I am not here to advocate outlawing the filibuster. The Senate can and must protect individual or small groups of Senators.

And filibusters –used properly – can extend debate on important matters while members advocate for their constituents and engage in the battle of ideas that is the hallmark of this body.

Yesterday's failed procedural vote on Chairman Schumer's campaign finance legislation is the perfect example of the abuse of Senate rules. The filibuster – deployed for years to extend debate in the Senate – sometimes for a whole day at a time -- actually is now being used to undermine even even having

debate. By filibustering the ability of the Senate to begin debate on the DISCLOSE Act, yesterday's minority denied the American people a full airing of the recent Supreme court decision in *Citizens United v. FEC*, and how that decision might affect our democracy.

## **II. Filibusters now prevent – not extend debate.**

### *A. The motion to proceed.*

I have introduced S.Res.440, that in a very practical way, would have ensured that we could move ahead to the debate stage on the DISCLOSE Act. By making motions to proceed non-debatable, my Resolution eliminates filibusters that – rather than extend debate – actually are abused to prevent debate. My Resolution would help the body operate more efficiently.

Making motions to proceed non-debatable is a practical step in the right direction that is worth incorporation in a larger Senate Rules Committee package of suggested rules amendments.

*B. Holds.*

Another type of filibuster that prevents, rather than extends debate, is the hold. Holds are the most antidemocratic form of the filibuster, because just one Senator can – even in a secret manner – block Senate business for long stretches of time.

S.Res.440 makes significant improvements to the holds process, including eliminating the secret hold. There is substantial bipartisan agreement on the principle of ending the secret hold, and whether the Committee adopts my approach on how to do it, or whether it adopts another way to get there, I certainly hope the Committee will do this as soon as is practicable.

My approach would require holds to be published in the Congressional Record and would require them to be bipartisan at that time. They would be limited to 30 days.

Neither party will be able to place secret holds. It's important that citizens have the ability to find out why things don't get done in Washington.

### **III. Efficiency.**

*Filibuster Supporters Must Actually Show up to Vote.*

Mr. Chairman, my fellow witness Senator Lautenberg has some interesting ideas about how to ask more of the filibustering Senators who seek to block legislation. I would like to discuss the reform proposal in my Resolution on this matter as well.



The Senate's rules effectively require an affirmative 60 Senators to vote to end debate on an item. Yet members in the minority do not have to show up and vote to continue on with a filibuster.

My Resolution would actually require at least 41/100ths of Senators to show up and vote to block cloture, or else the legislation can move forward. If you want to block the majority from moving ahead, then you at least should be required to show up for the vote.

#### **IV. Spurring bipartisan compromise.**

An atmosphere of overly partisan gridlock has rendered this body too often at an impasse. I think the rules are having a negative impact on partisanship that is only making a difficult environment for working across the aisle that much harder.

The American people want to see their elected representatives work together. There is a sense – often a correct sense – that the parties are missing the point.

We conduct votes with very, very partisan outcomes, and filibusters serve only to dig members in on one side or the other.

My Resolution is in part an effort to build in some incentives to help the Senate work through legislative impasses in a more constructive manner.

These rules changes address situations where the legislative process has already begun to break down. Following three failed attempts at ending a filibuster, new incentives are activated that should encourage the parties to negotiate. First, the 41 vote threshold that the filibustering minority must meet in

order to maintain the filibuster under the S.Res.440's new standard, would increase to 45 Senators, unless the minority is able to attract at least one Senator who caucuses with the majority to vote for the filibuster. This provides considerable incentives to the minority to keep an open dialogue and work with members of the other party. I believe building in this incentive can have a positive marginal affect on minority negotiations with members of the majority.

A second piece of the Resolution builds on this first one. Once the minority has convinced a member of the majority party to support a filibuster, then the threshold necessary to block cloture can still rise to 45 if the majority is able to attract three members of the minority to support cloture. So the Majority Leader – able to make substantive changes to the legislation at hand –

now has incentives to negotiate with members of the minority in the hopes that he can break the filibuster with their help.

While rules changes cannot fix Washington culture, they can reduce the incentives for inertia that – too many times since I’ve gotten here – have left the Senate in paralysis.

Encouraging bipartisanship through the Senate rules is at best only a partial answer. But I believe that improving some of the rules under which this body functions can begin to replace some of the bad habits Washington has developed, with better ones.

#### **V. A word About Practicality.**

The single most important thing we can do to improve the chance for success of a reform proposal, is to get the partisan intent out of it. We need substantial bipartisan support to update

the Senate's rules. So let's put together a package that would improve the rules, whether you're in the majority or the minority. And let's make it crystal clear that this is our intent.

My Resolution has been cosponsored by Senator Shaheen. And it's my sincere hope that some of them will be incorporated in a bipartisan reform package that can pass this body.

Thank you again, Mr. Chairman and to all the members of the Committee for conducting this important hearing.